

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO ALL  
ACTIONS.

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris  
Magistrate Judge Marianne B. Bowler

**PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE TESTIMONY REGARDING  
THE "EXPECTATIONS" OF MEMBERS OF CLASS 2**

Plaintiffs, by their undersigned counsel, respectfully request that this Court enter an order excluding testimony regarding the “expectations” of members of Class 2. As grounds for the foregoing, Plaintiffs state as follows:

1. As made clear in their Emergency Motion to Compel the Production of Documents from Sheet Metal Workers National Health Fund [Dkt. No. 3137], denied by the Court on October 2, Defendants intend to introduce evidence regarding the spread expectations of members of Class 2, MediGap payors.
2. This Court has previously recognized that a third-party payor’s “expectation” of the AWP/ASP spread is only relevant to Class 2 with regard to Defendants’ statute of limitations defenses.
3. Under Rule 402 of the Federal Rules of Evidence, evidence which is not relevant is inadmissible.
4. Therefore, this Court should limit the grounds upon which such Class 2 “knowledge” evidence is admitted to Defendants’ statute of limitations defenses.

WHEREFORE Plaintiffs respectfully request that this Court enter an order excluding any testimony regarding the "expectations" of members of Class 2, or limiting the purposes for which such evidence may be introduced, and all other relief that this Court deems just and proper.

DATED: October 3, 2006

By /s/ Steve W. Berman

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**CO-LEAD COUNSEL FOR  
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**CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE**

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on October 3, 2006, I caused copies of **PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE TESTIMONY REGARDING THE "EXPECTATIONS" OF MEMBERS OF CLASS 2** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman